

REMARKS

Claims 1 through 25 are pending in this application.

Requirement for Restriction under 37 C.F.R. §1.141

In Paper No. 10192004, the Examiner required Applicant pursuant to 35 U.S.C. §121 and 37 C.F.R. §1.141, for election of a single disclosed species from among the following three species identified by the Examiner as being “patentably distinct”:

- The multi-channel image encoder illustrated in Fig. 1;
- The multi-channel image encoder illustrated in Fig. 4; and
- The multi-channel image encoder illustrated in Fig. 5.

1. In response to the Requirement for Restriction, requiring the Applicant to elect between the inventions of Species I through III. The applicant provisionally elects Species III (figure 5) with traverse.

2. Provisionally the following species with claims are:

species I: Fig. 1 (claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 18);

species II : Fig. 4 (claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18); and

species III : Fig. 5 (claims 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25).

3. The Examiner states that there is no generic claim. However, as shown above, claims 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 18 are generic to species I (figure 1), species II (figure 4) and species III (figure 5).

4. As specifically stated in MPEP § 803, the examiner must show that the (A) The inventions must be independent (see MEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); **and** (B) There must be a **serious burden** on the examiner if restriction is required (see MPEP §803.02, § 806.04(a) -§806.04(i),§808.01(a), and § 808.02).

It is respectfully submitted that there would **not be a serious burden** upon the examiner in searching the invention species I through III.

First the Examiner has failed to show any kind of burden. The Examiner has failed to show that the different embodiments are in different classes or that such search would require not just a burden but rise to level of a serious burden. As stipulated in *MPEP* §803, if the search can be made without serious burden, the Examiner **must examine it on the merits** even if there are separate and distinct inventions. The Examiner has not alleged any serious burden in Paper No. 10192004 mailed on 2 November 2004 and thus the Examiner must examine the entire application. Moreover, because no burden was shown, if the restriction is not withdrawn in the next office action, a finality

on the restriction requirement cannot be made according to MPEP §706.07.

Secondly, as seen above, for example, in species I (figure 1), claims 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 18 are also in species II (figure 4) and III (figure 5). Rising to level of a *serious* burden is seriously suspect, especially in light of the generic claims involved. Therefore, there would be no serious burden on the Examiner and as required by MPEP §803, the Examiner must examine the entire application on the merits.

If the requirement for restriction is not removed, then the Applicant reserves the right to petition the requirement, because there is no *serious* burden upon the examiner in searching the invention species I through III.

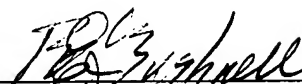
Therefore, the applicant respectfully submits that the restriction requirement should be removed.

In view of the foregoing election, this response is believed to be a complete response to the Requirement for Restriction. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

No fee is incurred by this Response. Should there be a deficiency in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of

Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. E. Bushnell', is written over a horizontal line.

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Folio: P56637
Date: 29 November 2004
I.D.: REB/SS